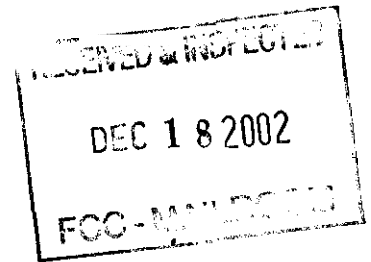


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of	)	
	)	
Request for Review by	)	
	)	
ABC Cellular Corporation	)	
Page Now, Inc./ ABC Paging, Inc.	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21✓
National Exchange Carrier Associations, Inc.	)	

## ORDER

Adopted: December 16, 2002

Released: December 17, 2002

By the Deputy Chief, Wireline Competition Bureau:

### I. INTRODUCTION

1. ABC Cellular Corporation Page Now, Inc./ABC Paging, Inc. (ABC Cellular) filed the above-captioned request for review of a decision issued by the Universal Service Administrative Company (Administrator) on April 19, 2001.<sup>1</sup> Pursuant to section 54.719(c) of the Commission's rules,<sup>2</sup> this request seeks review of the Administrator's denial of ABC Cellular's Letter of Appeal requesting that the Administrator accept ABC Cellular's late-filed revised Form 499-Q.<sup>3</sup> The Request for Review asks the Commission to direct the Administrator to accept ABC Cellular's late-filed Form 499-Q. For the reasons set forth below, we grant ABC Cellular's Request for Review.

### II. BACKGROUND

<sup>1</sup> Request for Review by ABC Cellular Corporation Page Now, Inc./ ABC Paging, Inc. at 1, filed June 17, 2002 (Request for Review).

<sup>2</sup> 47 C.F.R. § 54.719(c) (providing that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission).

<sup>3</sup> See Request for Review at 5-6.

## A. Relevant Law Governing Universal Service Contributions

2. Providers of interstate telecommunications services must contribute to the universal service support mechanism to ensure that all Americans have access to affordable telecommunications services.<sup>4</sup> Contributions to universal service are based on a percentage of the contributor's interstate and international end-user telecommunications revenues. This percentage is called the contribution factor, which is determined each quarter by the Commission.<sup>5</sup> Contributors must submit their revenue information to the Administrator using a Form 499-A and a Form 499-Q, which are the Telecommunications Reporting Worksheets. Contributors must file a Form 499-A in April to report their annual revenues from the previous year and file a Form 499-Q on a quarterly basis, on the first day of February, May, August, and November, to report their revenues from the prior quarter.<sup>6</sup> Any service providers that have universal service contributions totaling less than \$10,000 within a particular year are not required to submit contributions or Telecommunications Reporting Worksheets for that year.<sup>7</sup>

3. If a contributor discovers errors in a Form 499-Q that it has submitted, then the contributor may file a revised Form 499-Q. Revised Form 499-Q filings must be submitted by the filing date for the next Form 499-Q filing.<sup>8</sup> The contributor may also true-up errors from Form 499-Qs when it files the Form 499-A the following year.<sup>9</sup> If a contributor sells its assets to another company, the successor company becomes responsible for filing revenue information and paying contributions.<sup>10</sup>

## B. ABC Cellular's Request for Review

4. ABC Cellular requests that the Commission direct the Administrator to accept ABC

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<sup>4</sup> See 47 U.S.C. § 254.

<sup>5</sup> See 47 C.F.R. § 54.709(a).

<sup>6</sup> See Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms at 8 (Form 499-A Instructions); *see also* Instructions for Completing the Quarterly Worksheet for Filing Contributions to Universal Service Support Mechanisms at 8 (Form 499-4 Instructions).

<sup>7</sup> 47 C.F.R. § 54.708.

<sup>8</sup> *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5753, n.22 (2001) (*Form 499-Q Order*); *see also* Form 499-A Instructions at 9; Form 499-Q Instructions at 9.

<sup>9</sup> See *Form 499-Q Order*, 16 FCC Rcd at 5752-5753, para. 12.

<sup>10</sup> See Form 499-4 Instructions at 9; Form 499-A Instructions at 9; *see also* [www.universalservice.org/forms/499reportreq.asp](http://www.universalservice.org/forms/499reportreq.asp) (setting forth the Form 499 filing requirements for companies involved in the transfer and/or sale of assets).

Cellular's late-filed revised Form 499-Q, which rectifies errors made in its original Form 499-Q submitted on April 20, 2001 (April 2001 Form 499-Q). Upon the Administrator's acceptance of such form, ABC Cellular also requests that the Administrator credit ABC Cellular's account by \$14,403.73, the contribution amount assessed by the Administrator based on the data contained in the April 2001 Form 499-Q.<sup>11</sup>

5. In April 2001, ABC Cellular filed its completed April 2001 Form 499-Q." ABC Cellular explains that it discovered that an employee had erroneously reported all of its revenues as interstate in the April 2001 Form 499-Q filing when it received **an** invoice on June 26, 2001 from the Administrator." ABC Cellular claims that it filed the revised Form 499-Q after the due date because the Administrator delayed telling ABC Cellular to file a revised Form 499-Q to correct the error.<sup>14</sup> ABC Cellular contends that when it finally learned that it should file a revised Form 499-Q to resolve the error, ABC Cellular promptly submitted the revised Form 499-Q on September 6, 2001, over a month after the due date of July 31, 2001.<sup>15</sup> On August 1, 2001, prior to filing the revised Form 499-Q, ABC Cellular sold its paging services business to City Page & Cellular Services, Inc. (City Page).<sup>16</sup> In accordance with the Form 499-A Instructions, ABC Cellular indicates that City Page, the successor company, became responsible for reporting ABC Cellular's 2001 revenues in the Form 499-A filing due April 1, 2002.<sup>17</sup>

6. The Administrator rejected the revised Form 499-Q in an initial decision and on appeal because it was late-filed." In the Administrator's decision on appeal, it advised ABC Cellular that City Page, the successor company, should file the Form 499-A in April 2002, which would true-up the errors made in ABC Cellular's April 2001 Form 499-Q.<sup>19</sup>

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<sup>11</sup> Request for Review at 3, 13

<sup>12</sup> Request for Review at 3. According to ABC Cellular, its universal service contributions have been less than \$10,000 in the past, exempting it from paying contributions and filing Telecommunications Reporting Worksheets. *See* Request for Review at 2.

<sup>13</sup> Request for Review at 3-4. The invoice was in the amount of \$26,332.71, a portion of which **is** attributed to charges from a previous Form 499-A filing that is unrelated to this case. As noted above, ABC Cellular seeks a credit of \$14,403.73 from the Administrator. *See supra*, para. 4.

<sup>14</sup> Request for Review at 4. ABC Cellular states that it believes that this delay occurred because the Administrator was transitioning billing responsibilities to a new vendor, PricewaterhouseCoopers, at that time. *See* Request for Review at 4.

<sup>15</sup> Request for Review at 4-5. *See also* Request for Review, Exh. 6 at 1 (Administrator noting that ABC Cellular failed to file its revised Form 499-Q prior to the July 31, 2001 deadline).

<sup>16</sup> Request for Review at 3. *See* Request for Review, Exh. 2 (includes a copy of the executed Bill of Sale and Assignment).

<sup>17</sup> Request for Review at 12.

<sup>18</sup> *See* Request for Review at 5-6.

<sup>19</sup> *See* Request for Review, Exh. 1. at 2

7. ABC Cellular contends that the Administrator erred in rejecting ABC Cellular's revised Form 499-Q because the Administrator failed to seek guidance from the Commission, in accordance with section 54.702(c) of the Commission's rules,<sup>20</sup> before issuing its decision. Alternatively, ABC Cellular argues that a waiver of the deadline to file the revised Form 499-Q is warranted because ABC Cellular made good faith efforts to timely file the revised Form 499-Q.<sup>21</sup>

### III. DISCUSSION

8. We conclude that a waiver of the revised Form 499-Q deadline is warranted for the reasons discussed below." Accordingly, we direct the Administrator to accept ABC Cellular's late-filed revised Form 499-Q. The Commission's rules may be waived when good cause is demonstrated.<sup>23</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>24</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>25</sup> Additionally, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>26</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."

9. We find that good cause exists to grant the waiver. In particular, we find that the sale of ABC Cellular's paging business to City Page, and City Page's subsequent failure to file its Form 499-A presents special circumstances.<sup>28</sup> Generally, contributors have two opportunities to correct errors made in a Form 499-Q: (1) filing a revised Form 499-Q by the filing date of the next Form 499; or (2) filing a Form 499-A the subsequent year that reports the prior year's revenues.<sup>29</sup> In the instant case, the sale of ABC Cellular's paging business to City Page

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<sup>20</sup> See 47 C.F.R. § 54.702(c)

<sup>21</sup> Request for Review at 8.

<sup>22</sup> Although the Request for Review appears to request a waiver of section 54.709(d) of the Commission's rules, we will treat ABC Cellular's request as a waiver of the filing deadline in the Form 499-Q Instructions. See ABC Cellular Petition at 6-8. As a result, we do not find it necessary to address ABC Cellular's argument that section 54.709(d) does not apply to revised filings. See Request for Review at 6-7.

<sup>23</sup> 47 C.F.R. § 1.3

<sup>24</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)

<sup>25</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d at 1166

<sup>26</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166

<sup>27</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>28</sup> See E-Mail from Tracey Beaver, Universal Service Administrative Company, to Jennifer Gorny, Federal Communications Commission, dated September 20, 2002 (confirming that City Page has never filed a Form 499-A).

<sup>29</sup> See *supra*, para. 3

eliminated ABC Cellular's opportunity to true-up its Form 499-Q errors by filing a Form 499-A in April 2002. Although City Page should have corrected ABC Cellular's errors by filing a Form 499-A in April 2002, it failed to do so. Thus, without a waiver, ABC Cellular will be deprived of its opportunity to correct the errors made on its April 2001 Form 499-Q.

10. We also conclude that a waiver of the revised Form 499-Q deadline would serve the public interest by ensuring that ABC Cellular's contributions to universal service are equitable. Under the statutory requirements, the mechanisms for universal service contributions must be specific, predictable and sufficient, and contributions to the universal service fund must be made on an equitable and non-discriminatory basis." Absent a waiver, ABC Cellular would be required to contribute an erroneous amount to support universal service, which we believe would be inconsistent with the requirement that contributions be equitable. Accordingly, we find that granting the waiver would be in the public interest.

11. The Commission has recognized in other circumstances that the waiver of a deadline may be appropriate in circumstances where application of the deadline would impose a significant hardship on applicants." Our action in this Order is consistent with other orders in which the Bureau has granted waivers of deadlines when the petitioner experienced circumstances beyond its control.<sup>32</sup> In this case, although ABC Cellular had the ability to meet the first deadline, it did not have the ability to meet the second deadline.

12. Finally, we disagree with ABC Cellular's contention that the Administrator exceeded its authority by rejecting ABC Cellular's revised Form 499-Q without first consulting with the Commission." We find that the Administrator had sufficient guidance with regard to revised Telecommunications Reporting Worksheets and did not need further guidance from the Commission. Although the Commission's rules do not specifically address revised Form 499-4 filings, the Form 499-4 Instructions clearly state that revised filings must be submitted by the next Form 499 filing deadline.<sup>34</sup> The Instructions for the Form 499-A and Form 499-Q also state

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<sup>30</sup> 47 U.S.C. § 254

<sup>31</sup> See, e.g., *Federal-State Joint Board on Universal Service, Universal Service Support for Eligible Schools and Libraries, Year 3 Filing Window*, Order, CC Docket No. 96-45, 15 FCC Rcd 13932 (rel. June 8, 2000) (directing the Administrator's Schools and Libraries Division to treat as timely filed, the FCC Forms 471 that applicants were unable to file prior to the close of the Year 3 filing window due to a network server outage).

<sup>32</sup> See, e.g., *Federal-State Joint Board on Universal Service, Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 02-3316 (rel. Dec. 4, 2002) (*RFB Cellular Order*); *Chicago Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, Order, CC Docket Nos. 96-45, 97-21, 17 FCC Rcd 17086 (rel. Sept. 19, 2002) (*Chicago Public Schools Order*); *Federal-State Joint Board on Universal Service, Petition for Waiver of Section 54.809(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 01-1911, 16 FCC Rcd 15275 (2001).

<sup>33</sup> See Request for Review at 9-13

<sup>34</sup> See Form 499-4 Instructions at 9. Because the Form 499-Q is filed quarterly, service providers have three months to file revisions.

that the successor company becomes responsible for contributions after the transfer and/or sale of the contributor's assets." Accordingly, we find that the Administrator properly relied on the Form 499-Q and Form 499-A Instructions in reaching its conclusion and did not require guidance from the Commission.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 254, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by ABC Cellular on June 17, 2002 is GRANTED.

14. IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau

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<sup>35</sup> See Form 499-A Instructions at 9; *see also* Form 499-Q Instructions at 9.